



December 29, 2000

Mr. Jesús Toscano, Jr.  
Administrative Assistant City Attorney  
City of Dallas  
Dallas City Hall  
1500 Marilla  
Dallas, Texas 75201

OR2000-4923

Dear Mr. Toscano:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143200.

The City of Dallas (the "city") received a request for all public information including the tapes or transcripts of the executive session and the public session of the city plan commission on October 19, 2000. You state that you will release responsive information with the exception of the executive session tape. You assert that the certified tape recording from the executive session is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information. We have also reviewed the comments submitted by the requestor. *See* Gov't Code 552.304 (providing that a person may submit written comments to this office).

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes. Section 551.104 of the Government Code, a provision of the Open Meetings Act, makes the tape of a properly closed meeting confidential. An audiotape recording of a closed meeting is available for public inspection and copying only under a court order. Gov't Code § 551.104; Open Records Decision No. 495 at 4 (1988) (audiotape recordings of closed meetings are confidential unless court rules otherwise). Thus, such information cannot be released to a member of the public in response to an open records request and the Open Meetings Act does not permit the Office of the Attorney General to review the confidential agendas and tapes. *See* ORD No. 495 (1988). Furthermore, section 551.146 provides that it is a criminal offense to disclose to a member of the public an audiotape recording of a closed meeting.

The requestor asserts that the city has failed to provide proof that it complied with the Open Meetings Act when it met in executive session. This office is unable to resolve this question because the Office of the Attorney General does not have the authority to investigate or enforce violations of the Open Meetings Act. Violations of the Open Meetings Act are investigated by the local district attorney's office. Thus, if the October 19, 2000 executive session was a proper, closed meeting under the Open Meetings Act, then the tape recording is confidential under section 551.104 and must be withheld. However, if the October 19, 2000 executive session was not a proper, closed meeting under the Open Meetings Act, then the city must release the audiotape recording because the city has not asserted any other exceptions to public disclosure. *See* Gov't Code §§ 552.301, .302.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss of the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek  
Assistant Attorney General  
Open Records Division

JHB\seg

Ref: ID# 143200

cc: Mr. R. Michael Northrup  
President, North Oak Lawn Neighborhood Association, Inc.  
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Dallas, Texas 75219